

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	
DEMETRIUS WRIGHT,	:
Plaintiff, on behalf of himself and all	:
others similarly situated,	:
– against –	:
BRAE BURN COUNTRY CLUB, INC.,	:
Defendant.	:
----- X	

08 CV 3172 (DC)

**AFFIDAVIT OF
MARIA CONTE**

MARIA CONTE, being sworn states:

1. I am the Controller of Brae Burn Country Club, Inc. (“Defendant” or “Club”). I make this affidavit in support of the Club’s motion to dismiss the instant lawsuit against Defendant because the only plaintiff Demetrius Wright (“Plaintiff”) received a Federal Rule 68 Offer of Judgment for an amount exceeding any recovery he could receive on his claims.

Plaintiff’s Claim

2. I have been informed that Plaintiff’s suit contends that for the purposes of computing overtime compensation, his regular rate of pay should be increased by an amount reflecting the cost or other value of his lodging in a dormitory on Defendant’s premises and the meals he received while working at the Club.

Plaintiff’s Employment History

3. Plaintiff worked at the Club as a laundry room attendant from April 27, 2006 through April 22, 2007. The only times he worked over 40 hours in a work week were during 2006. Each week from the week ending May 14, 2006 through the week ending October 27, 2006, Plaintiff worked in excess of 40 hours. He also worked one additional hour beyond 40 during the week ending November 5, 2006. He did not work over 40 hours in any other week

during his entire employment at the Club. Attached as Exhibit A are records indicating the hours Plaintiff worked while employed by Defendant.

4. During the weeks in which he worked overtime, Plaintiff was compensated at the rate of \$9.00 per hour for all hours worked up to 40 in each work week, and at the rate of \$13.50 per hour for all hours worked in excess of 40 in each work week.

5. In this lawsuit, Plaintiff claims that he should receive an additional amount of overtime compensation based upon adding the cost of meals and lodging to his regular rate each week.

6. Under Plaintiff's theory, in order to calculate the amount he claims to be owed, Plaintiff's regular hourly rate would be increased by the cost or value of the dormitory facility he used plus the cost or value of the meals he ate while working at the Club divided each week by the number of hours he worked. Since he was already compensated for all hours worked (including time and one half for overtime hours at his \$9.00 per hour regular rate) if he is correct, Plaintiff would only be entitled to one-half of the additional amount added to his regular rate multiplied by the number of overtime hours he worked during that week.

The Cost or Value of the Meals

7. Staff and independent contractors working at the Club were provided with a communal meal prepared for the staff. It was not an a la carte meal from the Club's regular menu. Normally, the meal would be assembled in the kitchen from items that were left over from the previous meal's service or occasionally, would be simple and inexpensive meals like cold cuts and bread with cole slaw and perhaps salad if that was available. The staff had no choice; they were only offered the food that was prepared for the staff. It is estimated that the

costs of such meal did not exceed \$2.45 per person; in fact, our chef estimates that each meal is worth approximately \$1.50.

The Cost or Value of the Lodging

8. The lodging was provided in a separate building which in 2006 and 2007 lodged 24 employees in 12 rooms. Each room could only accommodate bunk beds. Six of the rooms were only 9 feet 6 inches deep by 8 feet two inches wide. Five other rooms were only 9 feet 6 inches deep by 12 feet 6½ inches wide, and one handicap accessible room measured 9 feet 6 inches deep and 14 feet 11¼ inches wide.

9. None of the 12 rooms in the dormitory had private washing or bathroom facilities. Instead, there was one communal bathroom for the 24 employees and one handicapped accessible bathroom. There were no kitchen facilities in the dormitory.

10. When built, the cost of the dormitory building was \$490,905. If the building was depreciated over 27 years, the weekly cost per employee would be \$14.57 (\$490,905 divided by 27 years divided by 24 places divided by 52 weeks) or \$2.28 per day. If the building was depreciated over only 20 years, the weekly cost per employee would be \$19.67 (\$490,905 divided by 20 years divided by 24 places divided by 52 weeks) or \$2.81 per day.

11. The average annual cost of operating the dormitory was \$7,637 per year and the cost in 2006 (when Plaintiff worked overtime) was \$9,185.46. If the average annual operating cost was \$7,637, the per person weekly cost would be \$6.12 (\$7,637 divided by 24 places divided by 52 weeks) or eighty-seven (\$.87) cents per day. If the annual cost for 2006 was used, the weekly cost would be \$7.36 per week (\$9,185.46 divided by 24 places divided by 52 weeks divided by 7 days) or \$1.05 per day.

12. The ranges of weekly costs for a bunk in the dormitory would therefore be from as little as \$20.68 per week [\$490,905 cost of the building divided by 27 years divided by 24 places divided by 52 weeks] plus (\$7,637 operating cost divided by 24 places divided by 52 weeks) to \$27.02 per week to (\$490,905 cost of the building divided by 20 years divided by 24 places divided by 52 weeks) plus (\$9,185.46 divided by 24 places divided by 52 weeks divided by 7 days).

13. In each week where Plaintiff worked overtime hours he was paid his \$9.00 per hour regular rate for the first 40 hours plus \$13.50 per hour for all hours worked over 40. Plaintiff contends his regular rate each week should be increased due to the meals and lodging he received. The formula for the extra overtime compensation would be (the cost of the meals and lodging) divided by (the hours worked) multiplied by (.5) multiplied by (the number of overtime hours worked):

$$\frac{(\$ \text{Meals} + \text{Lodging})}{(\text{Hours worked})} \times .5 \times \text{overtime hours}$$

14. For example, in the week ending August 27, 2007, Plaintiff worked 54 hours and consumed 7 meals at the Club. Thus, at \$27.02 maximum per week lodging and \$2.45 per meal (\$17.15), he received meals and lodging costing an additional \$42.15 for the 54 hours he worked or seventy-eight (\$.78) cents per hour added to his \$9.00 regular rate. Based on this, one-half of \$.78 per hour would be thirty nine (\$.39) cents per hour for his 14 hours of overtime would total an additional \$5.46. that week. At the \$20.68 minimum, Plaintiff would claim no more than an additional \$4.90 for that week.

15. As another example for the week ended July 9, 2006, the calculation is as follows:

Plaintiff could claim a maximum of \$12.55 –

$$\frac{(\text{Meals} = \$24.50 + \text{Lodging} = \$27.02)}{78 \text{ Hours}} \times .5 \times 38 \text{ overtime hours} = \$12.55$$

Or a minimum of \$11.05 -

$$\frac{(\text{Meals} = \$24.50 + \text{Lodging} = \$20.68)}{78 \text{ Hours}} \times .5 \times 38 \text{ overtime hours} = \$11.00$$

16. Attached as Exhibit B is an analysis reflecting each and every week Plaintiff worked overtime using the maximum rates which totals \$154.82 in additional compensation. Attached as Exhibit C is an analysis using the minimum rates which total \$132.27.

17. Even if liquidated damages should be added to the amount payable to the Plaintiff, it is clear that the maximum liability based on costs plus liquidated damages would be no more than \$310 and, therefore, the offer of judgment of \$1,000 plus reasonable attorney's fees to the date of the offer far exceeds any amount which the Plaintiff could recover in this case.

18. The United States Department of Labor Wage and Hour Division has investigated this claim, and has calculated that the most Plaintiff might be owed is \$119.10, an amount which Brae Burn has already agreed to pay.

19. I am informed that whether or not the Plaintiff accepts that judgment, the Plaintiff is removed from the case and as a result, the case should be dismissed as there is no proper representative of the putative members of the opt-in or opt-out class.

20. The Club, accordingly, respectfully requests that the above-entitled action be dismissed with prejudice.



Maria Conte

Sworn to before me this
3rd day of May 2008.



Notary Public

KAREN D. WILLIAMS
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01-WI6064649
QUALIFIED IN DUTCHESS COUNTY
MY COMMISSION EXPIRES 10-01-2009

EXHIBIT A

ADP

AUTOPAY EMPLOYEE EARNINGS RECORD

FILE NUMBER 090542		SOCIAL SECURITY NUMBER XXX-XX-6575		DATA CONTROL M		EMPLOYEE NAME AND ADDRESS WRIGHT, DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY	
CLOCK IN	DATE 1 04/27/2006	DATE 2 04/06/1967	DATE 3	10550			

COMPANY NAME BRAE BURN COUNTRY C		QUARTER ENDED 06/30/2006	FORM CODE FPB
STATE 01NY	SUBSIDY 19	CITY	RECORD NUMBER 140

PAY NO	P/E	HOLIDAY	DEPT NUMBER	RATE	HOURS		REGULAR		OVERTIME		EARNINGS		GROSS PAY	STATUTORY DEDUCTIONS				VOLUNTARY DEDUCTIONS				NET PAY
					REGULAR	OVERTIME	3 + 4	REGULAR	OVERTIME	3 + 4	CD	EARNINGS 5		CD	AMOUNT	CD	AMOUNT	CD	AMOUNT			
01	0430		320	9.0000				3200					28800	467	1786							256.84
02	0507		320	9.0000				3200					28800	385	418							285.20
03	0514		320	9.0000				4000		8100			36000	1187	2232							373.06
04	0521		320	9.0000				4000		6750			44100	2288	2734							363.33
05	0528		320	9.0000				4000		18900			42750	2085	2650							450.23
06	0604		320	9.0000				4000		18900			54900	3908	3404							535.12
07	0611		320	9.0000				4000		16875	18000	H	70875	6304	4394							612.30
08	0618		320	9.0000				4000		41850			77850	7350	4827							569.46
09	0625		320	9.0000				4000		35775			71775	3255	1128							498.09
			320	9.0000				4000		25650			61650	4920	3822							
														2145	894							

TOTALS	REG HOURS 1	OT HOURS 2	HOURS 3	HOURS 4	REG EARNINGS 1	OT EARN 2	EARNINGS 3	EARNINGS 4	EARNINGS 5	GROSS PAY	FEDERAL TAX	STATE TAX	SOCIAL SECURITY TAX	MEDICARE TAX	CITY TAX	TOT. VOL. DED.	NET PAY
QTR-->	35200	11400		2000	316800	153900		18000		488700	34948	15864	30299	7086	540		56.00
YTD-->										488700	34948	15864	30299	7086	540		3943.63

HOURS/UNITS ANALYSIS		EARNINGS ANALYSIS		STATE ANALYSIS		CITY ANALYSIS	
2000	H	18000	H	15864	01NY	5600	D

FILE NUMBER 090542	SOCIAL SECURITY NUMBER XXX-XX-6575	EMPLOYEE NAME WRIGHT, DEMETRIUS
------------------------------	--	---

COMPANY NAME BRAE BURN COUNTRY C	QUARTER ENDED 06/30
--	-------------------------------

AUTOPAY
EMPLOYEE EARNINGS RECORD

FILE NUMBER		SOCIAL SECURITY NUMBER		SEX	EMPLOYEE NAME AND ADDRESS
090542		XXX-XX-6575		M	
CLOCK IN	DATE 1	DATE 2	DATE 3		
	04/27/2006	04/06/1967			
					WRIGHT, DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY 10550

[illegible]

TOTALS	REG HOURS 1	QIT HOURS 2	HOURS 3	HOURS 4	REG. EARNINGS 1	QIT EARN. 2	EARNINGS 3	EARNINGS 4	EARNINGS 5	GROSS PAY	FEDERAL TAX STATE TAX	SOCIAL SECURITY TAX MEDICARE TAX	CITY TAX SUIOR	TOT. VOL. DED. NET PAY
QTR->	52000	25350		1600	468000	342225		14400		824625	69006 29932	51127 11957		89.00 6529.23
YTD->											103954	81426		

[illegible]

FILE NUMBER	SOCIAL SECURITY NUMBER	EMPLOYEE NAME	COMPANY NAME	QUARTER ENDED	EA CODE
090542	XXX-XX-6575	WRIGHT, DEMETRIUS	BRAE BURN COUNTRY C	09/30/2006	FPB

1997 AUTOMATIC DATA PROCESSING INC.

COMPANY NAME		QUARTER ENDED	FORM CODE
BRAE BURN COUNTRY C		03/31/2007	FPE
STATE	SUBSID	RECORD NUMBER	
01NY	19	70	

FILE NUMBER	SOCIAL SECURITY NUMBER	DATA CONTROL	SEX	EMPLOYEE NAME AND ADDRESS
090542	XXX-XX-6575		M	WRIGHT, DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY
CLOCK IN	DATE 1	DATE 2	DATE 3	
	04/27/2006	04/06/1967		10550

PAY NO	MIDAY	DEPT NUMBER	RATE	HOURS/QUARTS			EARNINGS			GROSS PAY	STATUTORY DEDUCTIONS				VOLUNTARY DEDUCTIONS				NET PAY
				REGULAR	OVERTIME	TOTAL	REGULAR	OVERTIME	TOTAL		FEDERAL TAX	STATE TAX	LOCAL TAX	CITY	AMOUNT	CD	AMOUNT	CD	
01	1231	320	9.0000	3100	1	800	27900	14400 D	49500	3001	3069	718	60					412.61	
02	0107	320	9.0000	3900	1	800	35100	7200 H	42300	1391	2523	513	60		4000 D			321.00	
03	0114	320	9.0000	3700	1		33300		33300	859	2064	483	60					292.66	
04	0121	320	9.0000	4000	1	800	36000	7200 S	43200	2055	2679	522	60					367.50	
05	0128	320	9.0000	4000	1		36000		36000	1129	2232		60					313.78	
06	0304	320	9.4000	2500	1		24440		24440	210	1515	355	60		8000 D			143.00	
07	0311	320	9.4000	4000	1		37600		37600	1289	2331	545	60					326.21	
08	0318	320	9.4000	3950	1		37130		37130	1242	2302	538	60					322.58	
09	0325	320	9.4000	4000	1		37600		37600	1289	2331	546	60					326.23	

TOTALS	REG HOURS 1	QIT HOURS 2	HOURS 3	HOURS 4	REG. EARNINGS 1	QIT EARN. 2	EARNINGS 3	EARNINGS 4	EARNINGS 5	GROSS PAY	FEDERAL TAX STATE TAX	SOCIAL SECURITY TAX MEDICARE TAX	CITY TAX SUIJSDI	TOT. VOL. DED. NET PAY
QTR->	33250		800	2400	305070		14400	21600		341070	12786 7080	21146 4946		120.00 2825.78
YTD->										341070	12786 7080	21146 4946		540 540

[illegible]

FILE NUMBER	SOCIAL SECURITY NUMBER	EMPLOYEE NAME	COMPANY NAME	Q. Q. CODE
090542	XXX-XX-6575	WRIGHT, DEMETRIUS	BRAE BURN COUNTRY C	03/31/2007
				FPB

FILE NUMBER	SOCIAL SECURITY NUMBER	DATA CONTROL	SEX	EMPLOYEE NAME AND ADDRESS
090542	XXX-XX-6575		M	WRIGHT, DEMETRIUS 17 SOUTH SECOND AVE NEW YORK, NY
CLASS. BY	DATE 1	DATE 2	DATE 3	
	04/27/2006	04/06/1967		10550

[illegible]

TOTALS	REG HOURS 1	OIT HOURS 2	HOURS 3	HOURS 4	REG EARNINGS 1	OIT EARN 2	EARNINGS 3	EARNINGS 4	EARNINGS 5	GROSS PAY	FEDERAL TAX STATE TAX	SOCIAL SECURITY TAX MEDICARE TAX	CITY TAX SUIJDI	TOT. VOL. RED. NET PAY
QTR->	13500				126900					126900	3021 2031	7868 1940	240	40.00 1079.00
YTD->										467970	15807 9441	29014		

[illegible]

FILE NUMBER	SOCIAL SECURITY NUMBER	EMPLOYEE NAME	COMPANY NAME	QUARTER ENDED	CD CODE
090542	XXX-XX-6575	WRIGHT, DEMETRIUS	BRAE BURN COUNTRY C	06/30/2007	FPB

1997 AUTOMATIC DATA PROCESSING INC.

EXHIBIT B

EXHIBIT C

